
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-02-NY-160
)	
International Car Service, Inc.)	NAL/Acct. No. 200332380003
Brooklyn, NY)	
)	FRN: 0007-4857-82

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: October 22, 2002

By the District Director, New York Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that International Car Service Inc. ("International") has apparently violated Section 301 of the Communications Act of 1934 ("Act"),¹ as amended, by operating unlicensed radio transmitters on a frequency of 33.20 MHz. We conclude that International Car Service, Inc. is apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On July 1, 2002, Commission agents using a mobile direction finding vehicle, monitored the frequency, 33.20 MHz in Brooklyn, NY to assess compliance in the Private Land Mobile Radio Services. The agents positively identified the source of transmissions to International, located at 687 5th Avenue, Brooklyn, NY. There was no evidence of a Commission authorization to operate this station on 33.20 MHz in Brooklyn, NY.

3. On July 3, 2002, Commission agents again monitored the frequency 33.20 MHz. and positively identified the source of transmissions to International. The agents then conducted a station inspection, and International showed the agents a copy of their station license, call sign WPLT995, to operate only on the frequency of 33.16 MHz. The agents advised International that their base station and mobile units were in violation by operating on an unauthorized frequency of 33.20 MHz.

4. On July 9, 2002, Commission agents monitored the frequency of 33.20 MHz and positively identified transmissions to International. On July 9, 2002, the New York Office sent a Notice of Violation, by First Class and Certified Mail Return Receipt Requested to the licensee, Jose Portoviejo, for operating on an unauthorized frequency of 33.20 MHz.

¹ 47 U.S.C. § 301.

5. On July 19, 2002, the New York Office received a reply to the Notice of Violation from Frank Felix stating that International hired him to reprogram International's base station and mobile radio units to the frequency of 33.16 MHz. Mr. Felix further stated that International had changed ownership. A Commission agent then checked New York City Taxi and Limousine Commission's records confirming Jose Burbano as the new owner of International, effective August 8, 2001. A Commission agent also checked with the FCC Wireless Telecommunications Bureau, who advised that there was no record of a new station license issued, or transfers of control from Jose Portoviejo to Jose Burbano, for operating on 33.20 MHz.

III. DISCUSSION

6. Section 301 of the Acts sets forth generally that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act.

7. Based on the evidence before us, we find that on July 1, July 3, and July 9, 2002, International Car Service, Inc. willfully² and repeatedly³ violated Section 301 of the Act by operating radio transmission equipment without a license.

8. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁴, sets the base forfeiture amount for operation without an instrument of authorization at \$10,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁵ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a ten thousand dollar (\$10,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁴47 C.F.R. § 1.80.

⁵47 U.S.C. § 503(b)(2)(D).

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules⁷, International Car Service, Inc. is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 301 of the Act.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, International Car Service, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332380003 and FRN: 0007-4857-82.

12. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332380003.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

⁶47 U.S.C. § 503(b).

⁷47 C.F.R. §§ 0.111, and 0.311.

⁸ See 47 C.F.R. § 1.1914.

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16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to International Car Service Inc., 687 5th Avenue, Brooklyn, NY 11215.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office